

DEPOSITION OF JEFFREY HARDIN

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

 **COPY**

DAVID DAVIS,

Plaintiff,

vs.

CASE NO. 3:06-CV-0054-VPM

CITY OF PHENIX CITY, ALABAMA,

et al.,

Defendants.

* * * * *

DEPOSITION OF JEFFREY SCOTT HARDIN, taken
pursuant to stipulation and agreement before Shannon
M. Williams, Certified Court Reporter and
Commissioner for the State of Alabama at Large, in
the offices of City Hall, 601 12th Street, Phenix
City, Alabama, on Wednesday, April 4, 2007,
commencing at approximately 9:05 a.m. EST.

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APPEARANCES

FOR THE PLAINTIFF:

THOMAS A. WOODLEY
Woodley & McGillivary
1125 15th Street N.W.
Suite 400
Washington, D.C. 20005

FOR THE DEFENDANTS:

JAMES P. GRAHAM, JR.
712 13th Street
P.O. Box 3380
Phenix City, Alabama 36868-3380

ALSO PRESENT:

David Davis
H.H. Roberts
Wallace Hunter

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It is further stipulated and agreed by and between counsel representing the parties in this case that said deposition may be introduced at the trial of this case or used in any manner by either party hereto provided for by the Federal Rules of Civil Procedure.

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1 JEFFREY SCOTT HARDIN

2 The witness, having first been duly sworn
3 or affirmed to speak the truth, the whole truth and
4 nothing but the truth, testified as follows:

5 THE REPORTER: Usual stipulations?

6 MR. GRAHAM: We do want to read and sign.

7 EXAMINATION

8 BY MR. WOODLEY:

9 Q. Mr. Hardin, could you state your full name
10 for the Record, if you would, please?

11 A. Jeffrey Scott Hardin.

12 Q. Mayor Hardin, my name is Tom Woodley, and
13 I'm one of the attorneys representing the plaintiff,
14 David Davis, in this lawsuit. And we are here this
15 morning pursuant to a Notice of Deposition that we
16 have served on you and the city and your attorneys.
17 And I'm going to ask you some preliminary questions
18 just to sort of set the stage for us this morning,
19 and then we'll get into the substance of my
20 questions and your answers.

21 Have you ever had your deposition taken before
22 in another case?

23 A. Once before.

24 Q. Once before? What kind of a case was that?

25 A. It was -- actually, it was a suit against

1 the city. I think it had to do with a fireman.
2 Jimmy, was it -- do you remember, was it Dennis
3 Duty?

4 MR. GRAHAM: Was it where he didn't get his
5 raise?

6 THE WITNESS: I think so. Whenever we had
7 to go to federal court in Opelika.

8 MR. GRAHAM: That would have been in Dennis
9 Duty and Randy Doster's cases.

10 Q. Thank you, sir. And, Mayor, are you
11 generally familiar with the issues and the
12 allegations in this particular lawsuit?

13 A. I've read the -- I guess the request for
14 deposition, yes, sir.

15 Q. And have you had at least a brief
16 opportunity to spend some time with the attorneys
17 that are representing you and the city in this case?

18 A. Yes, sir.

19 Q. And do you have a general knowledge and
20 understanding about the procedures we will be
21 following this morning in your deposition?

22 A. Yes, sir.

23 Q. I just want to review those just to make
24 certain on the record that we're on the same page
25 about the procedures that we'll be following this

1 morning?

2 A. Okay.

3 Q. I'll be asking you a number of questions
4 and, of course, we expect you to give full and
5 truthful answers. You understand that?

6 A. Yes, sir.

7 Q. And you have to verbalize your answer
8 because the reporter here can't take down nods of
9 the head so you'll have to verbalize your
10 responses.

11 A. Okay.

12 Q. You understand that?

13 A. Yes.

14 Q. If at any time you don't understand or hear
15 one of my questions, let me know immediately and
16 I'll be more than happy to repeat or rephrase that
17 question.

18 A. Okay.

19 Q. Do you understand that?

20 A. Uh-huh.

21 Q. You'll have to wait until I finish my
22 question before you begin your answer, again so the
23 reporter will have a clear record of what we're
24 talking about. Do you understand that?

25 A. Yes, sir.

1 Q. And this reporter will have then a chance
2 to, after we finish your deposition, to put this in
3 writing in a transcript form. And as your attorney,
4 Mr. Graham, just indicated, you'll have a chance to
5 review and read and sign that transcript. Do you
6 understand that?

7 A. Yes, sir.

8 Q. And, of course, finally, you have been
9 sworn to tell the truth under the penalty of
10 perjury, so you understand that as well?

11 A. Yes, sir.

12 Q. Could you please tell us what your current
13 position is with the City of Phenix City?

14 A. I serve as the mayor.

15 Q. How long have you held that position?

16 A. A little over two years.

17 Q. Was that your first elected term as mayor?

18 A. First as mayor, yes, sir.

19 Q. Did you hold a previous position with the
20 city?

21 A. I have served as a city council member.

22 Q. How long were you a council member?

23 A. Three years.

24 Q. And before that, what was your occupation?

25 A. I owned my own business.

1 Q. And what's the nature of that business?

2 A. It's a wholesale and retail meat company,
3 Phenix Food Service.

4 Q. And do you still have that business?

5 A. I do not.

6 Q. Did you sell that?

7 A. I am in the process of selling that. I
8 have been inactive from the company for about two
9 years, and then I have a five-year buyout.

10 Q. And how long is your current term as mayor?

11 A. It's a four-year term.

12 Q. And, basically, what are your duties and
13 responsibilities as the mayor of Phenix City?

14 A. Basically, I act in ceremonial purposes,
15 and then I oversee the meetings. I direct the
16 meetings, two council meetings a month, on the first
17 and third Tuesday of the month, and that's pretty
18 much the stated duties of the mayor in Phenix City.

19 Q. Are you considered a member of the city
20 council?

21 A. I am.

22 Q. Are you a voting member of the city
23 council?

24 A. I am, yes, sir.

25 Q. And what is the total number of members on

1 the city council?

2 A. Including myself, it's five.

3 Q. Now, Mr. Mayor, we have prepared a binder
4 of papers and exhibits just to facilitate and
5 expedite the depositions over the next couple of
6 days. So I want to give you a copy of these
7 deposition exhibits because I'll be asking you some
8 questions about these documents. And I have another
9 full set of exhibits for your attorney, Mr. Graham.

10 And if you could open up that binder, Mayor
11 Hardin, to Exhibit 8, this particular paper or
12 document is at least portions of the city charter as
13 I understand it. And if you could briefly just kind
14 of flip through those pages. Is it your
15 understanding as well that these are at least
16 certain sections of the city charter or city code?

17 A. It is, yes, sir.

18 Q. If you would turn to section 2.02, which is
19 four or five pages into this document.

20 A. Okay.

21 Q. And I should say, when you review these
22 documents, take as much time that you feel
23 comfortable to look at this before you respond to my
24 question, because we're really in no hurry here.

25 A. Okay.

1 Q. So section 2.02 talks about the form of
2 government. Is it accurate to say that this is a
3 council/manager form of government?

4 A. It is, yes, sir.

5 Q. And what, in layman's language, does that
6 mean to you as a council/manager form of government?

7 A. It means that the mayor and the city
8 council act basically as a board of directors, and
9 we set basically the direction and vision for the
10 city. And then the city manager handles the
11 day-to-day operations and basically acts on our
12 vision for the city, and moves the city in that
13 direction.

14 Q. Okay. Then if you would move on to section
15 3.06 of the city charter.

16 A. Okay.

17 Q. It indicates there in the beginning --

18 MR. WOODLEY: Could we go off the record
19 just for one second?

20 MR. GRAHAM: Sure.

21 (Discussion held off the record.)

22 MR. WOODLEY: Okay. We can go back on the
23 record.

24 Q. Mayor Hardin, I think we were on section
25 3.06 of the city charter where it indicates that the

1 mayor shall preside over the meetings of the city
2 council. Is that accurate?

3 A. Yes, sir.

4 Q. Then it indicates at the end of that first
5 sentence at section 3.06 that the mayor does not
6 have any regular administrative duties?

7 A. Correct.

8 Q. That is correct?

9 A. Yes, sir.

10 Q. Then in section 3.07 of the city charter
11 where it discusses powers, it indicates that all
12 matters of policy shall be vested in the city
13 council; is that correct?

14 A. Yes, sir.

15 Q. Then you'll see under subsection (a) of
16 3.07, it indicates that the city council shall have
17 the authority or power to appoint and remove the
18 city manager. Is that accurate?

19 A. Yes.

20 Q. Are all votes of the city council, such as
21 the possible appointment or removal of a city
22 manager, done by a majority vote?

23 A. Yes, sir.

24 Q. And is that reflected in the city charter
25 or city code as well?

1 A. It is.

2 Q. Then if you would move on to section 4.01
3 of the city code where it talks about authority and
4 duties of the city manager. In the next section,
5 4.02, it indicates that the city manager shall be
6 the head of the administrative branch of the city
7 government and shall have such responsibilities as
8 enforcing all laws and ordinances. Do you see where
9 it says that?

10 A. Yes, sir.

11 Q. And is that correct as well?

12 A. That is correct.

13 Q. And it indicates in section 4.02,
14 subparagraph (3), that the city manager will
15 exercise supervision over the officers and employees
16 of the city. Is that a correct statement?

17 A. That's correct, yes, sir.

18 Q. Then if you would move on to section 9.01
19 in the city code.

20 A. Okay.

21 Q. As I understand this section and the
22 following paragraphs, it indicates that the city
23 manager has the ultimate responsibility or authority
24 to remove any city officers or city employees. Is
25 that a correct statement?

1 A. That is correct.

2 Q. As I understand it, then, basically the
3 city manager would have the final authority, the
4 final say, as to whether or not any city employee
5 would be discharged or removed from his or her
6 position; is that correct?

7 A. That's the way I understand it, yes, sir.

8 Q. So you're not the final decision maker as
9 far as removing employees of the city?

10 A. No, sir.

11 Q. All right. Let's move on to another
12 subject matter area. Mr. Mayor, were you aware that
13 the Phenix City firefighters, at least at some point
14 in time, had formed or organized a local labor
15 organization?

16 A. Yes, sir.

17 Q. And when were you generally first aware of
18 that?

19 A. Probably when I ran for office the first
20 time. That was back in probably '98, somewhere
21 around that time. And I understood it to be an
22 association. I don't know if I really understood it
23 to be a labor union, but I understood it to be an
24 association.

25 Q. An association of the firefighters?

1 A. Correct.

2 Q. When you say you first ran for office, was
3 there a time where you ran for office as mayor and
4 you were unsuccessful?

5 A. I'm sorry. Before I ran for my first term
6 as city council member, that was during the time
7 that I heard about the association.

8 Q. And were you aware at some point in time
9 that the plaintiff in this lawsuit, David Davis,
10 seated at my right, became the president of the
11 firefighters local labor association?

12 A. I had heard that, yes, sir.

13 Q. Can you remember when you first heard that
14 approximately?

15 A. I don't know. That would have been during
16 my term as mayor that I heard that.

17 Q. So within the last two years?

18 A. Yes, sir.

19 Q. And how long have you known David Davis?

20 A. Probably about two -- I don't remember if I
21 met him during my first term. I don't know if I met
22 him or not. I guess I really knew who he was
23 probably during my -- starting my term or actually
24 when I was running for office for mayor.

25 Q. And since you have known Mr. Davis, would

1 it be fair and accurate to say that you have had a
2 fairly good relationship or working relationship
3 with Mr. Davis?

4 A. Well, my -- I don't have a working
5 relationship with people -- you know, my job here is
6 one that I am very removed from the people that work
7 for the city and -- you know, that's basically done
8 by the charter. So my dealings with employees here
9 are seeing them and saying, hey, how you doing, you
10 know, everything going well kind of deal. So it's
11 not -- we don't really have a relationship. It's
12 more of a hey, how you doing kind of thing. So
13 there's not a relationship between myself and the
14 employees. And I don't see a lot of them very
15 often.

16 Q. Okay. Mr. Mayor, when you ran for the
17 position that you currently hold of mayor, did you
18 ask for the support, the political support, of the
19 firefighters and their labor association?

20 A. I did not.

21 Q. You did not? Do you know whether or not
22 they furnished political support to you when you ran
23 as mayor?

24 A. They did.

25 Q. And did you appreciate that?

1 A. I sure did, yes, sir.

2 Q. And were they helpful and constructive in
3 you being elected?

4 A. All help is good when you're running for
5 office.

6 Q. That makes sense.

7 A. If you've got people out there working for
8 you, it's a benefit to you.

9 Q. I understand. And also when you were
10 campaigning to become the mayor of Phenix City, did
11 you have occasion to meet with the firefighters and
12 perhaps their leader of their labor association
13 during the campaign?

14 A. I did.

15 Q. And did you go out to a union hall or
16 restaurant and meet with them?

17 A. I was invited to go to, if I'm not
18 mistaken, two gatherings at a restaurant, a local
19 restaurant. I think during my campaign was two
20 different times that I attended. I was trying to
21 remember that the other day when we were discussing
22 this.

23 Q. What period of time would that have been
24 before the election when you were meeting with the
25 firefighters association?

1 A. Probably within six months of the election,
2 some time like that. Typically, elections around
3 here require about a year, ten to twelve months of
4 campaigning for mayor.

5 Q. So what year are we talking about?

6 A. We're talking about -- I think the election
7 was in 2004, if I'm not mistaken. Does that sound
8 right, 2004?

9 Q. Okay.

10 A. So that would have been, you know,
11 approximately during that year --

12 Q. Okay.

13 A. -- because election was in September.

14 Q. And on those two occasions when you were
15 campaigning for mayor and when you met with the
16 firefighters and their labor association, do you
17 remember basically what issues were discussed or
18 what concerns the firefighters might have had at the
19 time?

20 A. I don't really remember specific concerns.
21 I know there was a lot of questions as to, you
22 know -- I think that there were -- if I'm not
23 mistaken, I think there was another person that was
24 running there, or maybe two more people that were
25 running for office, and there were questions to us

1 basically what our platform was, what our agenda
2 was, and basically what kind of people we were. So
3 just trying to feel us out as candidates.

4 Q. But did they mention to you issues related
5 to their employment, the fire department's
6 operations or policies?

7 A. I know that -- I remember there being some
8 complaints. I don't remember specifics, but I know
9 that there was some talk from the people running the
10 meeting that we don't want to get into all this; you
11 know, we want to talk to the candidates and let them
12 answer questions. So there was -- I guess there was
13 a couple people that started complaining. There
14 were people there that said, you know, this is not
15 what this meeting is for kind of deal, if I'm not
16 mistaken. So I don't really remember any specifics,
17 but I know that there were some rumblings in the
18 room about some things that were not going
19 specifically the way they wanted them to go.

20 Q. Do you remember any concerns being
21 expressed in those two meetings when you were
22 campaigning for mayor that the firefighters were
23 perhaps troubled by staffing issues or equipment in
24 the fire department or issues like that? Do you
25 remember anything that comes to mind?

1 A. I guess what I remember mostly is really
2 personalities being talked about, that there were --
3 this person didn't like this person more so than
4 anything about staffing and equipment.

5 Q. Okay. Do you remember if Mr. Davis, the
6 plaintiff in this case, attended those two meetings
7 when you were campaigning?

8 A. I'm pretty sure -- I know he was at one. I
9 don't remember the other one. He could have been at
10 both of them, yes, sir.

11 Q. Switching gears, after the time that you
12 were elected and became mayor, did you have occasion
13 to meet with the firefighters labor association and
14 their leaders and members?

15 A. I went to -- I was invited to a retirement
16 party for one of the firemen and -- as a matter of
17 fact, it's a guy I went to high school with. And I
18 went to that meeting. That's the only meeting or
19 gathering that I can remember attending after
20 getting elected to office.

21 Q. Okay. And during your term as mayor of the
22 city, have you had any discussions with any
23 firefighters about issues concerning the fire
24 department, whether it might be staffing or swap
25 time or trading of time, any concerns that the